

**[Identical letters sent to Senator Charles Grassley, Chairman Bill Thomas, and Congressman Charles Rangel]**

January 16, 2002

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I would like to bring you up to date on some developments regarding implementation of Section 301 of the Trade Act of 1974 (the "Trade Act"), to supplement the annual report on the operation of the trade agreements program that was submitted to Congress on March 1, 2001. The Office of the United States Trade Representative ("USTR") continues to use Section 301 in concert with all the other tools available to us to open markets to U.S. exports.

*Intellectual Property Protection in Ukraine*

On March 12, 2001, the United States Trade Representative ("Trade Representative") identified Ukraine as a Priority Foreign Country under the "Special 301" provisions of the Trade Act and immediately initiated a Section 301 investigation. U.S. industries estimated that the unauthorized production of optical media products (CDs, CD-ROMS, DVDs, etc.) in Ukraine caused substantial damages to U.S. rightsholders and disrupted markets throughout the region. Despite the commitments that Ukraine made as part of the June 2000 U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy in Ukraine, the Ukrainian Government had failed to curtail this piracy.

After consulting with the Ukrainian Government, soliciting public comments on possible action under Section 301, and holding a public hearing on April 27, 2001, the Trade Representative decided on August 2, 2001 to suspend the duty-free treatment accorded to Ukrainian products under the U.S. Generalized System of Preferences. On August 7, 2001, USTR issued a preliminary list of Ukrainian products that could face additional trade sanctions.

The Ukrainian Government nonetheless failed to take effective steps to halt the piracy. After further consultations, solicitation of public comments on whether to impose additional trade sanctions on Ukrainian products, and another public hearing on September 25, 2001, the Trade Representative decided to impose additional trade sanctions on December 11, 2001. In light of the Ukrainian

Government's commitment to pass an optical media licensing law by December 20, 2001, however, the Trade Representative decided to delay the implementation of trade sanctions pursuant to Section 305 of the Trade Act. The Ukrainian Parliament ultimately did not pass an optical media licensing law during this period, and the Trade Representative consequently announced on December 20 that he was imposing prohibitive duties on approximately \$75 million worth of metals, footwear, and other imports from Ukraine. The increased duties will go into effect on January 23, 2002.

### *Canadian Wheat Board Practices*

USTR has continued to investigate the wheat trading practices of the Canadian Government and the Canadian Wheat Board ("CWB"), having initiated a Section 301 investigation on October 23, 2000, in response to a petition filed by the North Dakota Wheat Commission alleging that unfair marketing practices of the Canadian Government and the CWB are harming U.S. wheat producers. On March 30, 2001, the Trade Representative asked the U.S. International Trade Commission ("ITC") to assist in the investigation by preparing a report on conditions of competition between the U.S. and Canadian wheat industries. The ITC issued a confidential version of its report on November 1, 2001 and a public version of its report on December 21, 2001.

The Canadian wheat investigation was originally scheduled to conclude by October 23, 2001. On October 5, 2001, however, the Trade Representative granted the request of the North Dakota Wheat Commission to extend the investigation until January 22, 2002. USTR is continuing to review and analyze the information developed in the investigation.

### *EU Banana Import Regime*

In July 2001, the Trade Representative terminated action taken under Section 301 with respect to the European Communities' ("EC") regime for the importation, sale, and distribution of bananas. In April 1999, the WTO Dispute Settlement Body authorized the United States to impose retaliatory sanctions on \$191 million of EC exports after the EC failed to comply with WTO dispute settlement rulings on its bananas regime. On April 19, 1999, the Trade Representative decided to exercise this authorization pursuant to Section 301 by imposing 100 percent *ad valorem* duties on certain products of certain EC member States.

On April 11, 2001, the United States and the EC announced an understanding to resolve their long-standing bananas dispute. The understanding provides for phased implementation steps. By July 1, 2001, the EC was required to and did adopt a new system of banana licenses based on historic reference periods. By January 1, 2002, the EC was required to and did shift an additional 100,000 tons of bananas into a tariff rate quota accessible to bananas of Latin American origin (with respect to which U.S. distributors have a substantial historic share). By January 1, 2006, the EC will introduce a tariff-only regime for banana imports. Pursuant to this understanding, U.S. firms will obtain a substantial increase in the volume of bananas they are able to import into the EC market.

As a result of the EC's agreement to phase out its discriminatory banana regime, the Trade

Representative exercised his authority under Section 307 of the Trade Act to terminate, as of July 1, 2001, the action previously taken under Section 301 to increase duties on certain EC member State products. Pursuant to Section 306, however, USTR will continue to monitor the EC's implementation of the understanding. If the EC fails to implement the understanding, the Trade Representative may again take action under Section 301.

I look forward to consulting with you and your colleagues in the coming year regarding further developments in these areas.

Sincerely,

Peter B. Davidson  
General Counsel  
Office of the U.S. Trade Representative